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SPRINGFIELD

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FILE NO. S-1311

**INTERGOVERNMENTAL COOPERATION:
Use of Regional Transportation
Authority Funds to Aid Depart-
ment of Revenue in Collecting
Taxes for RTA**

Robert M. Whitler, Director
Department of Revenue
P.O. Box 3681
Springfield, Illinois 62708

Dear Mr. Whitler:

You recently asked for an opinion on certain ques-
tions related to a proposed agreement between the Department
of Revenue and the Regional Transportation Authority. Your
questions are as follows:

May the Department of Revenue properly expend
funds appropriated by Public Act 80-77 for fiscal
year 1978 for "its ordinary and contingent
expenses" to administer and enforce the motor
fuel taxes imposed by the Regional Transportation

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Authority under section 4.03 of the Regional Transportation Authority Act? Ill. Rev. Stat. 1976 Supp., ch. 111 2/3, par. 704.03.

May the Department of Revenue accept and use for administration and enforcement of the RTA taxes a processing, accounting and collection system designed to its specifications but provided at RTA expense?

In the collection and administration of the tax, may the Department of Revenue permit the RTA to defray the cost of supplies necessary for the ongoing collection of the tax by making payments directly to providers?

On your first question regarding the Department of Revenue expenditure of its appropriated funds to collect the tax, section 4.03 of the Act (Ill. Rev. Stat. 1976 Supp., ch. 111 2/3, par. 703.04) provides in part:

"* * * Except as otherwise provided in this Act, taxes imposed pursuant to this Section and civil penalties imposed incident thereto shall be collected and enforced by the State Department of Revenue. The Department shall have the power to administer and enforce such taxes * * *." (Emphasis added.)

It not only authorizes, but also requires the Department to collect taxes imposed pursuant to this section. The motor fuel taxes are clearly imposed pursuant to this section and nowhere is it otherwise provided that these taxes are not to

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be collected by the Department. Other provisions in the section, which is too lengthy to quote, make it quite clear that the Department is to collect the tax. Furthermore, section 39b33 of the Civil Administrative Code (Ill. Rev. Stat. 1975, ch. 127, par. 39b33) empowers the Department of Revenue:

"To exercise and perform such other rights, powers and duties as may be vested in said Department of Revenue by law."

Since the Department has the authority to collect the taxes, such collection is part of its ordinary and contingent expenses. Thus, money appropriated by Public Act 80-77 for the ordinary and contingent expenses of the Department may be spent to collect RTA motor fuel taxes.

Your second and third questions raise the issue of use by one governmental agency of funds or services provided by another. This is authorized by statutory and constitutional provisions relating to intergovernmental cooperation. Section 1.04 of the Regional Transportation Act (Ill. Rev. Stat. 1975, ch. 111 2/3, par. 701.04) states that the authority shall be, among other things, a "unit of

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local government". The Illinois Constitution of 1970, article VII, section 10(a) in turn, provides as follows:

"Units of local government and school districts may contract or otherwise associate * * * with the State * * * to obtain or share services and to exercise, combine, or transfer any power or function, in any manner not prohibited by law or by ordinance. * * * Participating units of government may use their credit, revenues, and other resources to pay costs and to service debt related to intergovernmental activities.

* * *

Sections 3 and 5 of the Intergovernmental Cooperation Act (Ill. Rev. Stat. 1975, ch. 127, pars. 743 and 745) provide:

"§ 3. Any power or powers, privileges or authority exercised or which may be exercised by a public agency of this State [defined in such a way as to include the RTA] may be exercised and enjoyed jointly with any other public agency of this State * * *."

"§ 5. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties."

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These provisions, and particularly those in the statute, have been described as the least restrictive in any intergovernmental cooperation statute in the nation. (Note, 1974 U. Ill. L. Forum, 498, 513.) The units of government included are authorized to "use their * * * revenues * * * to pay costs * * * related to intergovernmental activities" and to perform any "service, activity or undertaking which any of the public agencies entering into the contract is authorized by law to perform". Thus, a contract could provide for the RTA to supply the Department of Revenue with a collection system, information, and supplies, if approved by the governing persons in each of the two agencies.

I am aware that section 4.03(b) of the RTA Act (Ill. Rev. Stat. 1976 Supp., ch. 111 2/3, par. 704.03(b)) provides in part that any tax imposed by the RTA "shall conform, as closely as may be practicable, to the provisions of the 'Municipal Retailers Occupation Tax Act', as now or hereafter amended" and that in turn, section 8-11-1 of the Illinois Municipal Code (Ill. Rev. Stat. 1975, ch. 24, par. 8-11-1), known as the Municipal Retailers' Occupation Tax

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Act, provides in its fifth paragraph that the State Treasurer shall withhold from payment to the municipalities 2% of the amount collected, to reimburse the Department of Revenue for its collection expenses. Assuming that the 2% provision is applicable to the taxes imposed by the RTA, it is not a limitation on the authority of the Department of Revenue or the RTA granted by the Intergovernmental Cooperation Act. There is no conflict between the provisions.

In conclusion, I am therefore of the opinion that the Department of Revenue may expend its current appropriation for the collection of the RTA motor fuel taxes; that the Department of Revenue may accept and use for administration and enforcement of the taxes a system provided at RTA expense; and the Department of Revenue and the RTA may agree that the RTA will defray the cost of supplies necessary for the ongoing collection of the taxes by making payments directly to providers.

Very truly yours,

A T T O R N E Y G E N E R A L